

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

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Frederick Skoda,

Plaintiff,

v.

Lilly USA LLC, aka Eli Lilly & Co.,

Defendant.

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Court File No. \_\_\_\_\_

**NOTICE OF REMOVAL**

Defendant Lilly USA, LLC, through its undersigned counsel and pursuant to 28 U.S.C. § 1441(a) and 28 U.S.C. § 1446, notifies this Court that the above-captioned action is hereby removed from the District Court, Eighth Judicial District, County of Becker, Minnesota, wherein it is now pending, to the United States District Court for the District of Minnesota. As grounds for this removal, Defendant states as follows:

1. Defendant's Registered Agent received Plaintiff's Summons and Complaint on November 12, 2010. Attached hereto as Exhibit 1 is Plaintiff's Summons and Complaint.
2. No pleadings have been filed with the Becker County District Court.
3. Because thirty (30) days have not yet expired since this action became removable to this Court, this removal is timely under 28 U.S.C. § 1446(b).
4. This Court has original subject matter jurisdiction over this matter because Plaintiff's Complaint against Defendant falls within this Court's diversity jurisdiction pursuant to 28 U.S.C. § 1332.

5. The parties in this matter are completely diverse. Plaintiff is a resident and citizen of Becker County, Minnesota. Defendant, which was Plaintiff's employer, is incorporated under the laws of the State of Indiana, has its principle place of business and corporate headquarters in the State of Indiana, and is, therefore, a citizen of the State of Indiana.

6. The preponderance of evidence demonstrates that the amount-in-controversy requirement of 28 U.S.C. § 1332(a) is satisfied in this case. Plaintiff's Complaint alleges damages of \$51,930.00, as well as costs, disbursements and statutory attorney's fees. *See* Complaint; *see also* Minn. Stat. § 181.171 (authorizing recovery of attorney's fees for violation of Minn. Stat. § 181.13).

7. Statutory attorney's fees count toward satisfaction of the jurisdictional minimum for the purpose of establishing diversity jurisdiction. *See Crawford v. F. Hoffman-La Roche Ltd.*, 267 F.3d 760, 766 (8th Cir. 2001) (citing *Missouri State Life Ins. Co. v. Jones*, 290 U.S. 199, 202 (1933)). Defendant intends to defend itself vigorously in this lawsuit. Affidavit of Molly Thornton ("Aff. M.T."), ¶ 2. This case will involve multiple legal issues. Aff. M.T., ¶ 2. Defendant will dispute that Plaintiff has asserted a claim upon which relief can be granted. Aff. M.T., ¶ 2. It will also dispute liability based on the terms of the relevant incentive compensation plans and will dispute Plaintiff's calculation of penalties. Aff. M.T., ¶ 2. Defendant anticipates extensive motion practice, including but not limited to a Motion to Dismiss and, if necessary, a Motion for Summary Judgment. Aff. M.T., ¶ 2. Discovery will include written discovery and may require

depositions of witnesses located out of state. Aff. M.T., ¶ 3. The motion practice and expected discovery reasonably could cause the amount of Plaintiff's statutory attorney's fees to exceed \$24,000. Aff. M.T., ¶ 4. *See also Delsing v. Starbucks Coffee Corp.*, 08-CV-1154, 2010 WL 1507642, at \*3 (D. Minn. Apr. 14, 2010) ("Fee awards over \$75,000 are common in employment matters litigated through trial."). Therefore, the amount-in-controversy requirement for diversity jurisdiction is satisfied in this case because a reasonable jury could award Plaintiff damages, costs, and attorney's fees in excess of \$75,000. *See e.g., OnePoint Solutions, LLC v. Borchert*, 486 F.3d 342, 349 (8th Cir. 2007).

8. Defendant will serve written notice of the filing of this Notice of Removal upon Plaintiff and will cause a copy of this Notice to be filed with the Clerk of the District Court of Becker County, State of Minnesota, in accordance with 28 U.S.C. § 1446(d).

9. Defendant reserves the right to amend or supplement this Notice.

WHEREFORE, Defendant requests that the above-entitled action be removed from the District Court, County of Becker, State of Minnesota, to the United States District Court for the District of Minnesota.

Dated: December 10, 2010

**BRIGGS AND MORGAN, P.A.**

By: s/ Molly B. Thornton

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**ATTORNEYS FOR DEFENDANT**